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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
10/628,060	07/25/2003	Sarah Maillefer	2652	4150	
	7590 09/14/201 RIKER & STENBY	EXAMINER			
103 East Neck Road Huntington, NY 11743			VAKILI, ZOHREH		
Huntington, N	. 11/43		ART UNIT	PAPER NUMBER	
			1614		
			MAIL DATE	DELIVERY MODE	
			09/14/2010	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary		Appli	plication No. Applicant(s)					
		10/62	8,060	MAILLEFER ET A	MAILLEFER ET AL.			
Office Action Summary			iner	Art Unit				
		ZOHR	EH VAKILI	1614				
Period fo	The MAILING DATE of this communic r Reply	ation appears or	the cover sheet with	the correspondence a	ddress			
WHIC - Exter after - If NO - Failu Any r	ORTENED STATUTORY PERIOD FOR HEVER IS LONGER, FROM THE MAN IS IN THE MAN	ILING DATE OF f 37 CFR 1.136(a). In r nication. utory period will apply a ill, by statute, cause the	THIS COMMUNICA no event, however, may a reply nd will expire SIX (6) MONTHS a application to become ABAN	TION.  / be timely filed  S from the mailing date of this of DONED (35 U.S.C. § 133).				
Status								
1) 又	Responsive to communication(s) filed	on 22 June 201	0					
	•	o) This action						
′=	<del>_</del>							
٠,ـــ	closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11, 453 O.G. 213.							
Dispositi	on of Claims							
4) 🖂	Claim(s) 25-32 is/are pending in the a	pplication.						
•	4a) Of the above claim(s) is/are withdrawn from consideration.							
	Claim(s) is/are allowed.							
•	6)⊠ Claim(s) <u>25-32</u> is/are rejected.							
	Claim(s) is/are objected to.							
•	Claim(s) are subject to restricti	on and/or election	on requirement.					
Applicati	on Papers							
	The specification is objected to by the	Evaminer						
-			r h)□ objected to by	the Evaminer				
10/	10) The drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner.  Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).							
		_			ER 1 121(d)			
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.								
·	ınder 35 U.S.C. § 119							
12)	Acknowledgment is made of a claim fo	or foreign priority	under 35 U.S.C. & 11	19(a)-(d) or (f)				
· .	☐ All b)☐ Some * c)☐ None of:	n rereign priemy	under 00 0.0.0. 3 1	. ( ( ) ( ) ( ) ( ) ( ) ( )				
/1	1. ☐ Certified copies of the priority documents have been received.							
	Certified copies of the priority documents have been received in Application No							
	3. Copies of the certified copies of the priority documents have been received in this National Stage							
application from the International Bureau (PCT Rule 17.2(a)).								
* See the attached detailed Office action for a list of the certified copies not received.								
			·					
Attachmen	t(s)							
_	e of References Cited (PTO-892)		4) Interview Sum	nmary (PTO-413)				
	e of Draftsperson's Patent Drawing Review (PT	O-948)		fail Date mal Patent Application				
-	nation Disclosure Statement(s) (PTO/SB/08) r No(s)/Mail Date	6) Other:	mai ratent Application					

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#### **DETAILED ACTION**

## Claims 25-32 are presented for examination.

Applicant's Amendment filed June 22, 2010 has been received and entered into the present application. Claims 25-32 are pending and are herein examined on the merits.

Applicant's arguments, filed June 22, 2010 have been fully considered. Rejections not reiterated from previous Office Actions are hereby withdrawn. The following rejections are either reiterated or newly applied. They constitute the complete set of rejections presently being applied to the instant application.

# Double Patenting (Maintained)

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., In re Berg, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); In re Goodman, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); In re Longi, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); In re Van Ornum, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); In re Vogel, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and In re Thorington, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

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Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 25-32 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-19 of US Patent No. 6582679 B2.

An obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but an examined application claim is not patentably distinct from the reference claims because the examined claim is either anticipated by, or would have been obvious over, the reference claims.

In this case, the reference claims recite a hair wax product comprises from 3 to 20 percent by weight of an emulsifier. Wherein said emulsifier is selected from the group consisting of addition products of 2 to 30 mol ethylene oxide with fatty alcohols having 8 to 22 carbon atoms; addition products of 2 to 30 mol ethylene oxide with fatty acids containing 12 to 22 carbon atoms; addition products of 2 to 30 mol ethylene oxide with alkylphenols containing 8 to 15 carbon atoms in the alkyl groups; addition products of 1 to 5 mol propylene oxide with fatty alcohols having 8 to 22 carbon atoms; addition products of 1 to 5 mol of propylene oxide with fatty acids containing 12 to 22 carbon atoms; addition products of 1 to 5 mol propylene oxide with alkylphenols containing 8 to 15 carbon atoms in the alkyl groups; fatty acid mono- and diesters having 12 to 22 carbon atoms of addition products of 1 to 30 mol ethylene oxide with glycerol; addition products of 5 to 60 mol of ethylene oxide with castor oil; monoesters, diesters and

triesters of phosphoric acid and addition products of 2 to 30 mol of ethylene oxide with fatty alcohols having 8 to 22 carbon atoms; or mixtures thereof.

The components of the compositions are identical and so is its use. Such subject matter of the present claims directly conflicts with the subject matter of the reference claims and is not considered to be patentably distinct.

Thus, claims 25-32 are not considered to be patentably distinct over claims 1-19 of US Patent No. 6582679 B2, and are properly rejected under the judicially created doctrine of obviousness-type double patenting as being obvious and unpatentable variants.

### **Response to Argument**

The Terminal Disclaimer is not approved because the assignment indicates ownership belongs to WELLA AKTIENGESLLSCHAFT.

### Conclusion

No claims of the present application are allowed.

THIS ACTION IS MADE FINAL. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE**MONTHS from the mailing date of this action. In the event a first reply is filed within 
TWO MONTHS of the mailing date of this final action and the advisory action is not 
mailed until after the end of the **THREE-MONTH** shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication should be directed to Zohreh Vakili, telephone number 571-272-3099. The examiner can normally be reached from 8:30 a.m. to 5:00 p.m., Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin Marschel, can be reached at 571-272-0718. The fax number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <a href="http://pair-direct.uspto.gov">http://pair-direct.uspto.gov</a>. Should you have questions on access to the Private PAIR system, contact the Electronic business Center (EBC) at 866-217-9197 (toll-free).

Zohreh Vakili

Patent Examiner

September 8, 2010

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/Ardin Marschel/

Supervisory Patent Examiner, Art Unit 1614